

i. He stated that he was not receiving any other income.

28. On August 2, 2019, based on the Defendant's examination, a new Citation to Discover Assets to a Third-Party was served on Chase for all accounts in the name of the Defendant.

29. Chase's subsequent response included monthly bank statements from the joint account shared by the Defendant and Justin, ending in 1511, and showed the following pertinent transactions:

- a. 7/11/2019 - \$480.00 - QuickPay with Zelle Payment From Offsprings Inc
- b. 7/11/2019 - \$480.00 – ATM Withdrawal

The amounts received from Offsprings Inc totaled \$480.00.

30. Chase's subsequent response also included monthly bank statements from a checking account ending in 1918 containing only the name of Justin, but it showed numerous transactions made from the debit card ending in 3224.

31. The aggregate amount of known income earned by the Defendant is \$24,582.00.

32. On September 5, 2019, the continued citation examination of the Defendant was held outside of Courtroom 202. In relevant part, the Defendant made the following statements/responses during the examination:

- a. He does not have his own bank account, but uses Justin's Chase account to make deposits and withdrawals;
- b. He performs work for Offsprings' city stores and payments are deposited through Chase QuickPay into Justin's Chase account;

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- c. He has never made a payment to John and Dana Burgess for the \$100,000.00 allegedly borrowed;¹
- d. He resides in the marital home awaiting foreclosure proceedings while the rest of his family moved into a townhome for which he pays rent; and
- e. He understands that he is under citation and has a judgment against him, but he does not care.

33. The Defendant is employed as a contractor by Roberts Drapery.

34. Upon information and belief, Roberts Drapery has made payments to the Defendant despite currently being subject to a Third-Party Citation that has not been dismissed.

35. The Defendant is also employed as a contractor by Vertical Blinds Factory.

36. Upon information and belief, Vertical Blinds Factory has continued to pay the Defendant for services performed despite being subject to a Third-Party Citation which was not dismissed.

37. Upon information and belief, the Defendant received a tax refund in the amount of \$1,741 for 2018 while subject to the Citation.

38. Additionally, upon information and belief, ISI has been paying full-time wages to Justin despite his status as a part-time employee and attending college at DePaul University.

39. Upon information and belief, the additional income paid to Justin is actually a supplement for the Defendant's income to pay for expenses and/or luxuries.

40. The Defendant, while subject to the Citation, has received at least \$24,632.00 in known income in addition to a tax refund, but has not made a single payment toward the judgment.

¹ On September 1, 2009, the Defendant and Sarah borrowed \$100,000.00 from John and Dana Burgess, and executed a second mortgage against the home owned by the Defendant and Sarah. See Mortgage dated September 1, 2009 attached hereto as **Exhibit "D"**.

41. The aforementioned monies paid to the Defendant were subsequently transferred, disposed of, and interfered with were subject to the lien of the Citation and were required to be paid to the Plaintiff.

42. The Defendant made and/or allowed transfers, disposed of, and interfered with property belonging to him that is not exempt from execution or garnishment.

43. Plaintiff has established a *prima facie* case requiring the Court to issue a Rule *instanter* why the Defendant should not be held in indirect civil contempt of court for violating the Citation against him.

44. The court may punish any party who violates the restraining provision of a citation as and for a contempt. 735 ILCS 5/2-1402(f)(1).

45. If a creditor discovers personal property of the judgment debtor that is subject to the lien of a citation to discover assets, the creditor may have the court impress a lien against a specific item of personal property, including a beneficial interest in a land trust. 735 ILCS 5/2-1402(k-10).

46. Defendant LANNY GIBRICK should be held in indirect civil contempt of Court for his willful and without just cause failure to abide by the Citation.

47. Defendant LANNY GIBRICK's unreasonable and wilful actions have forced Plaintiff to incur attorney's fees and costs in bringing this Petition for Rule to Show Cause before the Court, and cause additional, unnecessary collection expenses.

WHEREFORE, the Plaintiff, ROBERT GOLDEN, respectfully requests that this Honorable Court:

- a. Issue a Rule to Show Cause *instanter* why the Defendant, LANNY GIBRICK, should not be held in indirect contempt of court;

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- b. Enter an order finding the Defendant, LANNY GIBRICK, in indirect civil contempt of Court for violating this Court's December 13, 2018 order;
- c. Enter an order finding the Defendant, LANNY GIBRICK, in indirect civil contempt of Court for violating this Court's December 13, 2018 order;
- d. Order the Defendant, LANNY GIBRICK, to pay the full amount that should have been turned over to the Plaintiff while subject to the Citation or, in the alternative, order Defendant, LANNY GIBRICK, to Cook County Jail until he pays the full amount that should have been turned over to the Plaintiff; and
- e. Order the Defendant, LANNY GIBRICK, to pay reasonable attorney's fees to Plaintiff ROBERT GOLDEN and/or his attorneys for all collection efforts and for bringing and litigating this Petition; and
- f. For such other relief that this Honorable Court deems just and equitable.

Respectfully submitted,



The Law Offices of Brendan R. Appel, LLC
Attorneys for Plaintiff

The Law Offices of Brendan R. Appel, LLC
Brendan R. Appel
Selwyn M. Skevin (Of Counsel)
191 Waukegan Road, Suite 360
Northfield, Illinois 60093
(847) 730-4224
(847) 730-4114 (facsimile)
bappel@balegal.com
Attorney No.: 38354

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT GOLDEN

v.

LANNY GIBRICK, INDIVIDUALLY AND D/B/A ALAN'S DRAPERIES

No. 2014 M2 001791

FILED
11/16/2018 10:51 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
20142001791

CITATION TO DISCOVER ASSETS

To: Lanny Gibrick, 501 Thorndale Drive, Buffalo Grove, IL 60089

YOU ARE COMMANDED to appear before Judge JEFFERY L. WARNICK or any judge sitting in his/her stead in Room 202 at the location of 5600 OLD ORCHARD ROAD, SKOKIE, Illinois, on December 13, 2018, at 9:30 A. m. to be examined under oath to discover assets or income not exempt from enforcement of a judgment. A judgment in favor of ROBERT GOLDEN and against LANNY GIBRICK was entered on DECEMBER 16, 2014 (or revived on _____, _____) in the amount of \$ 16,374.23 and \$ 22,555.97 remains unsatisfied.

YOU ARE COMMANDED to produce at the examination:

A completed Income and Assets form attached to this Citation, all documents in Addendum A attached, and all books, papers or records in your possession or control which may contain information concerning the property or income of, or indebtedness due judgment debtor.

YOU ARE PROHIBITED from making or allowing any transfer or other disposition of, or interfering with, any property not exempt from execution or garnishment belonging to the judgment debtor or to which the judgment debtor may be entitled or which may be acquired by or become due to the judgment debtor and from paying over or otherwise disposing of any money not so exempt, which is due or becomes due to the judgment debtor, until further order of court or termination of the proceedings. You are not required to withhold the payment of any money beyond double the amount of the judgment.

WARNING: YOUR FAILURE TO APPEAR IN COURT AS HEREIN DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL.

CERTIFICATE OF ATTORNEY (OR NON - ATTORNEY)

NOTE: THIS CITATION MUST BE ACCOMPANIED AT THE TIME OF SERVICE BY EITHER A COPY OF THE UNDERLYING MEMORANDUM OF JUDGMENT OR A CERTIFICATION BY EITHER THE CLERK THAT ENTERED THE JUDGMENT OR THE ATTORNEY FOR THE JUDGMENT CREDITOR SETTING FORTH THE FOLLOWING:

In the Circuit Court of Cook County (or other Jurisdiction _____) on DECEMBER 16, 2014, (specify)
A judgment in the amount of \$ 16,374.23 was entered in favor of ROBERT GOLDEN and against LANNY GIBRICK in Case No. 2014 M2 001791 and a balance of \$ 19,299.07 remains unsatisfied.

I, the undersigned certify to the Court, under penalties as provided by law pursuant to 735 ILCS 5/1-109 that all information stated herein is true.

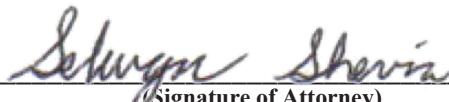
Atty. No.: 38354

Name: LAW OFFICES OF BRENDAN R. APPEL

Address: 191 WAUKEGAN ROAD, SUITE 360

City/State/Zip: NORTHFIELD, IL 60093

Telephone: 847-730-4224


(Signature of Attorney)

WITNESS: _____, _____

Clerk of the Circuit Court

SEAL

**ADDENDUM A TO CITATION TO DISCOVER ASSETS
DOCUMENTS TO BE PRODUCED**

1. Copies of state and federal income tax returns for the last three years.
2. Earnings statements from your last thirty-six (36) months' worth of paychecks or other income to you.
3. Business records for the present year and past calendar year which reflect assets, liabilities, gross receipts and expenses for any sole proprietorship, partnership, limited liability company or corporation in which you, or your spouse, own any interest.
4. Current bank statements for the past (36) months from all banks, or other financial institutions, where any sole proprietorship, partnership, limited liability company or corporation in which you, or your spouse, own any interest, has had an account of any kind.
5. Current bank statements for the past (36) months from all banks, or other financial institutions, where you, or your spouse have an account of any kind.
6. All trust agreements in which you, or your spouse, are named trustor, trustee or beneficiary.
7. All deeds, leases, contracts, and other documents representing any ownership interest you, or your spouse, have in any real property, and all deeds of trust, mortgages, or other documents evidencing encumbrances of any kind on your real property.
8. All stocks, bonds, or other security of any class you may own, by you separately, or jointly with others, including options to purchase any securities.
9. Titles to all motor vehicles owned or leased by you, your spouse, or any children living at your home.
10. The payment book or last three months' monthly statements, for any motor vehicle owned or leased by you, your spouse, or any children living at your home.
11. All life insurance policies in which you are either the insured or the beneficiary.
12. All promissory notes held by you, and all other documents evidencing any money owed to you either now or in the future.
13. All deeds, bills of sale, or other documents prepared in connection with any transfer made by you, either by gift, sale, or otherwise, in the last three years.
14. A schedule of all regular expenses paid by you, such as installment debts, food, utilities, etc. Include the amount paid, the payee, and, if an installment debt, the amount of debt owing and any security pledged.

15. All documents evidencing any interest you have in any pension plan, retirement fund, or profit sharing plan.
16. All records pertaining to your assets and finances.
17. All records of any unincorporated business of which you are an owner or part owner, or have been an owner.
18. All statements for the past 36 months from any person or entity, including, without limitation, your attorneys, showing any escrow, retainer or account balance.
19. All applications for credit or loans completed by you or any entity in which you have an interest for the past 36 months including mortgages and/or loan modifications.

INCOME AND ASSETS FORM

To Judgment Debtor: Please complete this form and bring it with you to the hearing referenced in the enclosed citation notice. You should also bring to the hearing any documents you have to support the information you provide in this form, such as pay stubs and account statements. The information you provide will help the court determine whether you have any property or income that can be used to satisfy the judgment entered against you in this matter. The information you provide must be accurate to the best of your knowledge.

If you fail to appear at this hearing, you could be held in contempt of court and possibly arrested.

In answer to the citation and supplemental proceedings served upon the judgment debtor, he or she answers as follows:

Personal Information

Name: _____

Primary Telephone: _____

Residence: _____
(Address/City/State/Zip)

Date of Birth: _____

Marital Status: _____

Number of Dependents: _____

Income and Assets

Select any of the following statements that accurately describe your current income and assets. Complete any of the information that is applicable to the items you select.

A. I am currently employed self employed. The name(s) and address(es) of my employers, or my business name and address (if self-employed) is/are as follows:

I earn \$ _____ weekly bi-weekly annually other:

I have the following benefits with my employer(s): _____

B. I am currently unemployed. I support myself through (Select all that apply):

Government Assistance at \$ _____ per month

Unemployment at \$ _____ per month

Social Security at \$ _____ per month

SSI at \$ _____ per month

Pension \$ _____ per month

Other \$ _____ per month

C. I currently own real estate at the following location(s). (List the address for each parcel of real estate owned as well as the name and address of the mortgage company for each property that has a mortgage on it. Please use the supplement "Part C" of this form if more space is needed.):

1. Address: _____

Name/Address of Mortgage Company: _____

2. Address: _____

Name/Address of Mortgage Company: _____

D. The following individual(s) and I currently co-own real estate located at (Please use supplement "Part C" of this form if more space is needed): _____

E. I have beneficial interest in a land trust.

Name of Trustee: _____

Address of Trustee: _____

The beneficial interest is listed in my name and _____

An assignment of beneficial interest in the land trust was signed to secure a loan from

Name of Lender: _____

Address of Lender: _____

F. My financial assets are as follows (Select all that apply):

Checking Account at _____ with a balance of \$ _____

Savings Account at _____ with a balance of \$ _____

Money Market at _____ with a balance of \$ _____

Certificate of Deposit at _____ with a value of \$ _____

Safe Deposit Box at _____

Stocks /Bonds: _____

Other Accounts: _____

Account Type _____ Financial Institution _____ Balance/Value _____

G. I own the following selected items: _____

Vehicle: _____

Year: _____

Make: _____

Model: _____

VIN #: _____

Jewelry (Please provide a detailed description of each item owned): _____

Personal Computer

DVD Player

Television

Stove

Microwave

Work Tools

Business Equipment

Farm Equipment

Other property (Please provide a detailed description of each item owned): _____

Signature of Judgment Debtor: _____ Date: _____

Income and Assets Supplemental Form

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
SECOND MUNICIPAL DISTRICT

ROBERT GOLDEN

Plaintiff

v.

LANNY GIBRICK

Defendant

}

No. 2014 M2 001791

ORDER

This matter having come before the court, the court having jurisdiction as being fully advised in the premises:

IT IS ORDERED AS FOLLOWS:

4219

4001 XP Default Judgment for Plaintiff For \$ 16,374.23 and Costs.

9207 Payment Plan yes no.

9293 Assess costs _____

4002 XP Default Judgment for Defendant For \$ _____ and Costs.

4219 (on counter complaint or third party complaint)

4293 4293 Assess costs _____

4001 XP Default Judgment For Plaintiff

4301 XP Default Judgment for specific Litigant

4219

8001 Judgment for Plaintiff after trial for \$ _____ and Costs.

9207 Payment Plan yes no.

4293 Assess costs _____

8002 Judgment for Defendant after Trial

8301 Judgment for Specific Litigant after Trial in favor of

For \$ _____ and Costs.

See Attached Order Judgment itemized as follows: \$8,000 compensatory damages
\$5,000 punitive damages for fraud
\$3,374.23 in attorneys fees and costs.

Atty. No. 38354

Name: Brendan Appel

Enter: _____

Attorney For: Plaintiff

Address: 191 Waukegan Rd Ste 360

Associate Judge Jeffery L. Warnick

City/Zip: Northfield IL 60093

Judge

DEC 16 2014 Judge's No.

EXHIBIT C

United States Bankruptcy Court, Northern District of Illinois

Name of Assigned Judge	A. Benjamin Goldgar	CASE NO.	15 B 23651
DATE	February 16, 2018	ADVERSARY NO.	16 A 14
CASE TITLE	Robert Golden v. Lanny R. Gibrick		
TITLE OF ORDER	Order granting plaintiff Robert R. Golden's motion for sanctions		

DOCKET ENTRY TEXT

The balance of Robert Golden's motion to compel and for sanctions is granted. Defendant Lanny Gibrick's answer to the adversary complaint will be stricken and a default judgment entered against him declaring that his debt to Golden in the amount alleged in the complaint is nondischargeable.

[For further details see text below.]

STATEMENT

Before the court for ruling in this adversary proceeding is balance of a motion to compel and for sanctions that plaintiff Robert Golden filed against defendant Lanny Gibrick in 2016. Only the sanctions portion remains. For the reasons below, that portion will be granted. Gibrick's answer will be stricken, and a default judgment entered against him on the complaint.

1. Background

The relevant facts are taken from the court's docket and Golden's supplemental memorandum in support of his motion. The facts are not in dispute.

Gibrick's chapter 7 case began life in July 2015. In January 2016, Golden filed an adversary complaint against Gibrick alleging that Gibrick owed him a debt nondischargeable under section 523(a)(2)(A) of the Code. The debt arose out of Gibrick's agreement to furnish and install window treatments at Golden's residence. The window treatments were never installed. Instead, Golden alleges, Gibrick closed his business, took Golden's deposit, and ran.

After Gibrick answered the complaint, Golden began taking discovery, serving Gibrick with interrogatories and a document request. When Golden failed to sign his interrogatory answers or provide any written response to the document request, Gibrick moved to compel proper responses. Part of the motion sought sanctions for what Golden termed Gibrick's

STATEMENT

“spoliation of evidence.” Gibrick no longer had any text messages relating to the transaction with Golden because, he said, he had changed cell phones. That was the alleged spoliation.

On November 18, 2016, the court granted the motion in part and continued it in part. The request to compel discovery responses was granted, and Gibrick was ordered to serve a proper response to the document request, to produce documents in response to the request, and to serve proper, signed and sworn interrogatory answers. The sanctions request was continued and set for further briefing. In his reply memorandum, Golden indicated that Gibrick’s deposition would be necessary.

Meanwhile, on December 2 or thereabouts, Gibrick provided a written response to the document request and produced a few pages of documents. In response to Golden’s requests for documents relating to (1) orders made on Golden’s behalf, (2) the installation at Golden’s home, (3) communications relating to Golden, and (4) Gibrick’s bank records, Gibrick responded: “No such documents exist to my knowledge.” Attached to the response was a sworn statement from Gibrick declaring: “I have read the foregoing Responses, which are based on a diligent and reasonable effort by me to obtain information currently available.” The statement also declared that “these Responses are true to the best of my present knowledge, information, and belief.”

Less than three weeks later, on December 22, 2016, Golden took Gibrick’s deposition. Gibrick testified that when he closed his business, he moved the records from the business to his residence in Buffalo Grove where he put them in his garage where he continued operating for a time. Asked whether the records were still in the garage, Gibrick said he didn’t know. Asked whether he had searched the garage for the documents, he responded: “No. It’s very messy.” “So you haven’t gone through and looked through the garage for any of this stuff?” the questioning continued. “No,” Gibrick said.

Gibrick also testified that he had in fact placed an order for the window treatments with the Hunter Douglas company. But according to Golden, discovery from Hunter Douglas later revealed that Gibrick had placed no orders with the company that year – not for Golden and not for anyone else.

Finally, Gibrick testified that he had changed cell carriers, and when he did so he turned in his phone. As a consequence, he had not saved any of the text messages on the phone.

Gibrick’s sanctions request was continued for many months while the parties sought to settle their dispute. When settlement discussions foundered, the court set the sanctions request for supplemental briefing based on the deposition Golden had taken of Gibrick.

In his supplemental memorandum, Golden asserts that Gibrick should be sanctioned and a default judgment entered against him. Golden offers three bases for his request: (1) the Hunter Douglas discovery shows Gibrick perjured himself at his deposition when he said he had placed

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an order for Golden; (2) Gibbrick's deposition testimony shows he committed spoliation of evidence in connection with the disposition of his cell phone; and (3) Gibbrick's deposition testimony shows he perjured himself in his sworn statement supplied with his response to Golden's document request when he said he had conducted a "diligent and reasonable" search for documents. Golden filed no memorandum objecting to the imposition of sanctions.

2. Discussion

Gibbrick's motion will be granted and Gibbrick sanctioned. The false statement he furnished in response to the document request about his supposedly diligent search is reason enough to impose a severe sanction. Gibbrick's answer will be stricken and a default judgment entered against him on the adversary complaint.

The sources of authority to impose that sanction here are two. The first is Rule 37. Fed. R. Civ. P. 37 (made applicable by Fed. R. Bankr. P. 7037). Rule 37(b)(2)(A)(iv) provides that if a party fails to obey a discovery order, the court may, among other things, render a default judgment against the disobedient party. Fed. R. Civ. P. 37(b)(2)(A)(iv). Even in the absence of a discovery order, Rule 37(c)(1) provides that when a party fails to provide information as Rule 26(e) requires – meaning the party fails to supplement his response to a request for production of documents – the court may impose sanctions under Rule 37(b)(2)(A), including entry of a default judgment under Rule 37(b)(2)(A)(iv), unless the party shows the failure was either substantially justified or harmless. Fed. R. Civ. P. 37(c)(1).

Entry of a default judgment is permitted under Rule 37 upon a finding of willfulness, bad faith, or fault, provided the court first considers and explains why lesser sanctions would be inappropriate. *Heckler & Koch, Inc. v. German Sport Guns GmbH*, No. 11-CV-01108-SEB, 2015 WL 4878644, at *10 (S.D. Ind. May 22, 2015), *report and recommendation adopted*, 2015 WL 4878191 (S.D. Ind. Aug. 14, 2015). "Bad faith" for this purpose means conduct that is either intentional or in reckless disregard of a party's obligations. *Id.* "Fault" means "more than a mere mistake" and suggests "objectively unreasonable behavior." *Id.* (internal quotation omitted).

The other source of authority for entry of a default judgment is the court's inherent authority. Federal courts have inherent authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Reid v. Wolf (In re Wolf)*, 566 B.R. 233, 235-36 (Bankr. N.D. Ill. 2017) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). That includes the power "to fashion an appropriate sanction for conduct which abuses the judicial process." *Id.* at 236 (quoting *Chambers*, 501 U.S. at 44-45).

Sanctions under a court's inherent authority must be awarded "with restraint and discretion," *Chambers* 501 U.S. at 44, but are warranted where a party has acted in "bad faith" – that is, "vexatiously, wantonly, or for oppressive reasons." *Sell v. Country Life Ins. Co.*, 189 F. Supp. 3d 925, 929 (D. Ariz. 2016) (internal quotation omitted); *see also Chambers*, 501 U.S. at

STATEMENT

45-46.

A severe sanction is warranted against Gibrick. Gibrick has dragged his feet in responding to Golden's discovery ever since he answered the complaint. His failures to respond properly to Golden's interrogatories and document request necessitated a motion to compel, which was granted. Gibrick was specifically ordered to "serve a proper written response to the document request" and "produce documents [in] response to the request." (Dkt. No. 32). Despite that order, he produced virtually no documents, asserting in his response that no responsive documents existed and swearing separately that the response was the product of "a diligent and reasonable effort . . . to obtain information currently available." But the sworn statement was a lie. Gibrick admitted at his deposition that after he closed his business he had stored records from the business in his garage, and he had never bothered to search the garage for the documents. His sole excuse: "It's very messy."

Gibrick's perjured statement that he had conducted a diligent search for documents was at the very least made in reckless disregard of his obligations as a party to this litigation. It was more than a mere mistake. For that matter, it was more than just objectively unreasonable, especially coming after a court order that required him to obey the rules and respond properly. Gibrick's failure to look for documents in the one place he had stored them after his business closed shows he could not have cared less whether he performed a proper search. Nor could he have cared less whether in the end he produced documents to Golden. His goal was delay, no matter how achieved. Because he has not seen fit to respond to Golden's request for sanctions, Gibrick has also failed to show (as it was his burden to show) that his failure to respond was either harmless or substantially justified. In fact, it was neither.

A sanction less severe than entry of judgment by default, finally, would not be appropriate. Further discovery orders, such as an order requiring Gibrick at long last to search his garage and produce documents, would be insufficient and would serve only to reward his stalling. Equally pointless would be an order barring Gibrick from introducing particular evidence at trial. The problem here is a *defendant's* failure to produce documents to a *plaintiff*. Golden, not Gibrick, will have the burden of proof if the matter went to trial. Gibrick can defend this proceeding, and evidently intends to do so, without taking discovery or introducing any evidence at trial. A monetary penalty – a fine or an award of attorney's fees – would be pointless, as well. Gibrick is a chapter 7 debtor. The likelihood that Golden could recover any monetary penalty from Gibrick (or that Gibrick would ever pay such a penalty to the clerk of the court) is minimal.

The punishment Golden requests fits Gibrick's crime. Given the seriousness of Gibrick's misconduct – not only failing to produce documents after entry of an order to produce them but stating under oath that he had conducted a diligent search for those documents when he had not – the sanction of a default judgment is entirely warranted, both under Rule 37 and under the court's inherent authority. *See, e.g., Sell*, 189 F. Supp. 3d at 944-45 (entering default judgment as a

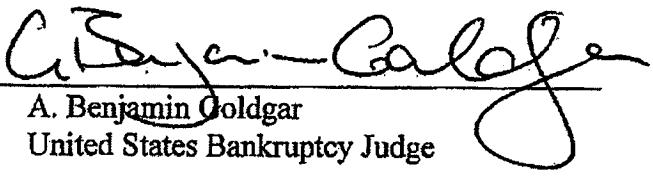
STATEMENT

sanction against defendant that produced no documents and asserted falsely that a “reasonable search” had been conducted).^{1/}

3. Conclusion

For these reasons, the balance of Robert Golden’s motion to compel and for sanctions is granted. Defendant Lanny Gibrick’s answer to the adversary complaint will be stricken and a default judgment entered against him declaring that his debt to Golden in the amount alleged in the complaint is nondischargeable.

Dated: February 16, 2018


A. Benjamin Goldgar
United States Bankruptcy Judge

^{1/} In *Sell*, the court entered a default judgment although the defendant at least conducted a search and produced documents after having been caught in its false statement. *Sell*, 189 F. Supp. 3d at 933. Gibrick, by contrast, has taken no steps to produce documents to Golden although his lie about making a “diligent and reasonable effort” to search for them was exposed at his deposition over a year ago.

EXHIBIT D

Return to:
 Ronald L. Bell + a, son, Jr.
 1275 Barclay Blvd #101
 Buffalo Grove IL 60089



Image# 045291280003 Type: MTG
 Recorded: 08/08/2009 at 08:49:06 AM
 Receipt#: 2009-00042557
 Total Amt: \$39.00 Page 1 of 3
 IL Rental Housing Fund: \$10.00
 Lake County IL Recorder
 Mary Ellen Vanderventer Recorder

File 6518644

SECOND MORTGAGE

\$100,000.00

September 1, 2009

501 Thorndale Drive, Buffalo Grove, IL 60089

This Second Mortgage ("Security Instrument") is given on September 1, 2009. The Mortgagor(s) are Lanny R. and Sarah Gibrick, whose address is 501 Thorndale Drive, Buffalo Grove, IL 60089 ("Borrower"). This Security Instrument is given to John and Dana Burgess, who address is 55 S. Wynstone Drive, Barrington, IL 60010 ("Lender"). Borrower's owes Lender the principal sum of One Hundred Thousand Dollars (U.S.:\$100,000.00). This debt is evidenced by Borrower's note ("Note") dated the same date as this Security Instrument, which provides for the circumstances under which the principal sum will become due and payable.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note and in accordance with the terms of the Note, and (b) the performance of Borrower's promises and agreement under this Security Instrument and the Note. For this purpose, borrower does hereby mortgage, grant and convey to the Lender, the following described property located in Lake County, Illinois:

LOT 25 IN AMBERLEY, BEING A SUBDIVISION IN THE NORTH OF SECTION 33, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1988 AS DOCUMENT 2700262, IN LAKE COUNTY, ILLINOIS. PERMANENT INDEX NUMBER: 15-33-104-045. COMMONLY KNOWN AS 501 THORNDALE DRIVE, BUFFALO GROVE, IL 60089.

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter part of property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

3

BORROWERS PROMISES that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances or record.

1. **Payment of Principal and Interest:** Borrower shall pay, when due and payable, the principal sum of the debt evidenced by the Note and according to the terms of the Note.
2. **Occupancy:** Borrower shall own and occupy, establish and use the Property as Borrower's sole residence and shall continue to occupy the Property as Borrower's sole residence.
3. **Fees:** Lender may collect fees and charges authorized by the Note.
4. **Grounds for Acceleration of Debt:** Lender may require immediate payment in full of all sums secured by this Security Instrument as evidenced by the Note after any default by the Borrower in the event the Borrower fails to make timely payment hereunder.
5. **Foreclosure Procedure:** If Lender requires immediate payment in full under Paragraph 4 above, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing remedies provided in paragraph 5, including but not limited to, reasonable attorney's fees and cost of title evidence.

If Lender invokes the power of sale, Lender shall give notice to Borrower in the manner provided in paragraph 7. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including but not limited to, reasonable attorney's fees; (b) to all sums secured by this Security Instrument as evidenced by the Note; and (c) any excess to the person or persons legally entitled to it.

6. **Joint and Several Liability; Co-Signers:** Borrower's promises and agreements shall be joint and several. Any borrower who is not a law enforcement officer, teacher or firefighter/emergency medical technician who co-signs this Security Instrument, but does not execute the Note is: (a) co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) not personally obligated to pay the sums secured by the Security Instrument as evidenced by the Note; (c) not obligated to live in the Property as his or her sole residence for three years; and (d) agrees that Lender and any other Borrower may agree to make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

7. **Notices:** Any notice that must be given to Borrower under this Security Instrument will be given by delivering it or by mailing it by first class mail to Borrower at the Property address above.

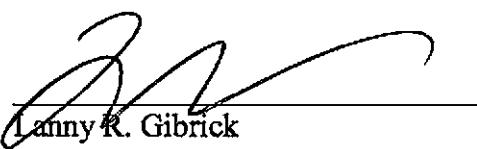
Any notice that may be given to the Lender under this Security Instrument will be given by mailing it first class mail to the Lender at the address stated above or at a different address, if Borrower is given notice of that different address.

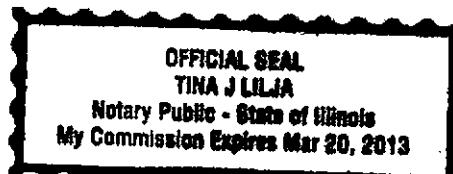
8. **Governing Law; Severability:** This Security Instrument shall be governed by Federal Law. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provision of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end, the provisions of this Security Instrument and the Note are declared to be severable.

9. **Borrower's Copy:** Borrower shall be given one conformed copy of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms of this Security Instrument.

Borrowers:


Lanny R. Gibrick




Sarah Gibrick

State of Illinois)
) SS
County of Lake)

Subscribed and sworn to before me
this 1 day of September, 2009.
by Lanny R. Gibrick.


Tina J. Lilja
Notary Public

State of Illinois)
) SS
County of Lake)

Subscribed and sworn to before me
this 1 day of September, 2009.
by Sarah Gibrick.


Tina J. Lilja
Notary Public

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Line 4

Robert Golden
PEOPLE OF THE STATE OF ILLINOIS

v.

No. 14 MZ 001791

Lanny Gibrick

ORDER

This matter having come before the court on the citations continued from October 15, 2019 against Lanny Gibrick, Roberts Drapery, Vertical Blinds & J.P. Morgan Chase Bank, the Court having jurisdiction and being fully advised, and counsels appearing for Plaintiff & Defendant and Defendant appearing personally;

IT IS HEREBY ORDERED:

1. A rule to show cause is issued against Lanny Gibrick and served on him in open court;
2. Defendant has 21 days to file a response to the Petition for Rule to Show Cause by November 26, 2019;
3. Plaintiff has 14 days to file a reply, if any, by December 10, 2019;
4. Hearing on the Rule issued is set for December 18, 2019 at 1:30 p.m.
5. Citation against the Defendant is entered and continued to 12/18/19.
6. Third Party Citations are entered by separate order.

Attorney No.: 38354

Name: Law Offices of Brendan Appel

Atty. for: Plaintiff

Address: 101 Waukegan Rd, Ste 3100

City/State/Zip: Northfield, IL 60093

Telephone: (847) 739-4224

ENTERED:

Dated: NOV 05 2019

Judge's No.

Judge Jeffery L. Warrick
NOV 05 2019
Circuit Court - 2024

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT H

VAN 020232
1063

WARRANTY DEED ILLINOIS STATUTORY

REAL ESTATE TRANSFER TAX		
County:	\$240.00	
Illinois:	\$480.00	
Total:	\$720.00	
Stamp No:	0-584-005-984	
Declaration ID:	20191104945387	
Instrument No:	7614677	
Date:	6-Dec-2019	





Image# 058850900003 Type: DW
 Recorded: 12/06/2019 at 09:38:11 AM
 Receipt#: 2019-00065484
 Page 1 of 3
 Fees: \$780.00
 IL Rental Housing Fund: \$9.00
 Lake County IL Recorder
 Mary Ellen Vander�enter Recorder

File **7614677**

THE GRANTOR, **Lanny Gibrick and Sarah Gibrick, husband and wife**, of the County of Lake, State of Illinois, for and in consideration of Ten and NO/100ths (\$10.00) Dollars, and other good and valuable consideration in hand paid, CONVEYS and WARRANTS to **Shilpa Jeril Thomas, a married woman**, whose current mailing address is 310 Normand Ct, Des Plaines, IL60016, all interest in the following described Real Estate situated in the County of Lake in the State of Illinois, to wit:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"

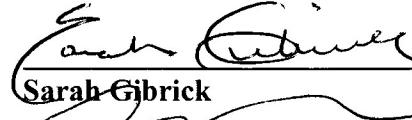
SUBJECT TO: covenants, conditions, and restrictions of record; public and utility easements; acts done or suffered through Buyer; all governmental taxes or assessments confirmed and unconfirmed; condominium declaration and bylaws, if any; and general real estate taxes not yet due and payable at time of closing,

hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

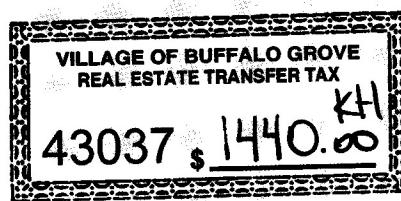
Permanent Real Estate Index Numbers: 15-33-104-045-0000

Address of Real Estate: 501 Thorndale Drive
Buffalo Grove, IL60089

Dated this 5th day of November, 2019.


 Sarah Gibrick

 Lanny Gibrick



(3)

STATE OF _____)
COUNTY OF Lake)
) SS

I, the undersigned, a Notary Public and for said County, in the State aforesaid, CERTIFY THAT **Lanny Gibrick and Sarah Gibrick**, personally known to me to be the same person(s) whose name are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 10th day of November, 2019.



Adrienne Est
Notary Public

Prepared by: William L. Kabaker
951 Forestway Drive
Glencoe, IL 60022

Mail to: Shilpa Jevil Thomas
310 Norman Ct.
Des Plaines, IL 60016

Name and address of Taxpayer:

Shilpa Teri Thomas
501 Thorndale Dr.
Buffalo Grove, IL 60089

Grantee herein is prohibited from conveying captioned property for any sales price for a period of 30 days from the short sale closing date November 15, 2019 (closing date). After this 30 day period, Grantee is further prohibited from conveying the property for a sales price greater than \$576,000(120% of purchase price until 90 days from the short sale 11/15/2019(closing date).These restrictions shall run with the land and are not personal to the Grantee.

EXHIBIT "A"

LOT 25 IN AMBERLEY, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 33, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1988 AS DOCUMENT 2700262, IN LAKE COUNTY, ILLINOIS.

Permanent Real Estate Index Numbers: 15-33-104-045-0000

Address of Real Estate: 501 Thorndale Drive
Buffalo Grove, IL60089

EXHIBIT I

PETITION FOR RULE TO SHOW CAUSE

NOW COMES Plaintiff ROBERT GOLDEN, by and through his attorney, The Law Offices of Brendan R. Appel, LLC, and petitions this Honorable Court to issue a Rule to Show Cause as to why Defendant LANNY GIBRICK should not be held in contempt of Court for lying under oath during a Citation to Discover Assets examination and for transferring assets in violation of Plaintiff's Citation to Discover Assets, and in support thereof, states as follows:

1. Default judgment was entered against the Defendant on December 16, 2014 in the amount of \$16,374.23 plus costs.

2. Plaintiff issued a Citation to Discover Assets to Defendant on or about May 19, 2015 (the “First Citation”). A copy of the First Citation is attached hereto as **Exhibit A**. Defendant was served with the First Citation via Certified Mail. Plaintiff received a return receipt indicating Defendant signed for the certified mailing of the First Citation on or about May 29, 2015. A copy of this return receipt is attached hereto as **Exhibit B**. The First Citation

directed the Defendant to appear for examination before this Honorable Court on or about June 11, 2015 (the “First Exam”).

3. The First Citation included a Rider which directed the Defendant to produce relevant documents.

4. The First Citation prohibited Defendant from making or allowing any transfer of property not exempt from the First Citation, or paying or disposing of any non-exempt money.

5. Defendant appeared at the First Exam without any of the documents.

6. Defendant was sworn by the Clerk of the Circuit Court and promised to respond truthfully to questions posed to him by Plaintiff’s Counsel.

7. During the First Exam, Defendant stated under oath that he had one bank account with Bank of America, which had a negative balance. He stated that his wife Sarah Gibrick had an account with Chase Bank, but that he had no other accounts. See affidavits of Plaintiff’s counsel, attached hereto as **Exhibit C** and **Exhibit D**.

8. This Honorable Court continued the First Citation to July 2, 2015 (the “Second Exam”) and directed the Defendant to bring the documents requested by the First Citation.

9. On or about June 12, 2015, Plaintiff subpoenaed Chase for statements for the last 12 months for all accounts in the name of Sarah Gibrick or Defendant, and all accounts registered at Defendant’s residential address. A copy of this subpoena is attached hereto as **Exhibit E**.

10. On July 1, 2015, Plaintiff received records from Chase that show Defendant lied under oath during the First Exam. Contrary to his statement that he had “no other accounts” beyond the Bank of America account, Defendant is on three accounts at Chase:

- a. Defendant is named on a joint checking account with his wife (the "Joint Account");
- b. Defendant is named on a high school checking account with his son, J.G. (the "High School Account"); and
- c. Defendant is named on a standard checking account with his son, J.G. (the "Third Account").

11. The most recent statement of the Joint Account, with account numbers redacted, is attached hereto as Exhibit F. An affidavit of business records from a Chase Bank employee is attached hereto as Exhibit G.

12. A review of Exhibit F shows Defendant to be an active user of the Joint Account, and shows that Defendant transferred money from the account after receipt of the First Citation on or about May 29, 2015.

13. Defendant wrote seven checks from May 11, 2015 to June 6, 2015 totaling \$4,265.43. Defendant's wife wrote one check for \$100.00. See Exhibit F.

14. The checks written by the Defendant include three checks written after Defendant received the First Citation on May 29, 2015 ordering him not to pay any exempt money:

- a. Check No. 6250 on June 1, 2015 for \$112.00;
- b. Check No. 6251 on June 1, 2015 for \$500.00;
- c. Check No. 6255 on June 1, 2015 for \$211.58.

15. Exhibit F is only the most recent statement from the Joint Account, and only shows activity which posted to the account up to June 8, 2015. On information and belief, Defendant has continued to use and transfer money from the account.

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16. Based on information Plaintiff received from Chase prior to the receipt of the statements on July 1, 2015, Plaintiff issued a Citation to Discover Assets to Chase on or about June 24, 2015 (the “Second Citation”). The return date for the Second Citation is July 16, 2015.

17. Further examination reveals Defendant using the Joint Account to fund his profligate lifestyle while he is under a Citation to Discover Assets, and runs contrary to his testimony at the First Exam that he has no assets. On information and belief, Defendant spent \$186.63 in golf green fees alone during the most recent statement period of the Joint Account, including on June 4, 2015 after receipt of the Citation to Discover Assets.

18. Defendant lied under oath when he testified that he had “no other accounts.” On information and belief, Defendant lied to prevent the Plaintiff from discovering non-exempt funds. Plaintiff suspects that Defendant has other undisclosed accounts as well.

19. Defendant transferred funds on at least three occasions after receipt of the First Citation on May 29, 2015 through the issuance of the three checks. These transfers violated the First Citation and have prejudiced the Plaintiff.

20. This Court should hold Defendant in contempt of Court and sanction Defendant by ordering Defendant to compensate Plaintiff for its costs and attorney’s fees incurred in this supplementary proceeding, fining Defendant an appropriate amount, and ordering Defendant to fully comply with his obligations under the Citations.

WHEREFORE, Plaintiff, ROBERT GOLDEN, respectfully requests that this Court enter an order issuing a rule to show cause against Defendant, LANNY GIBRICK d/b/a ALAN’S DRAPERIES, INC., requiring Defendant to explain why he should not be held in contempt of this Court, awarding Plaintiff its reasonable attorney’s fees and costs as a sanction to Defendant,

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fining Defendant an appropriate amount, and ordering Defendant to fully comply with his obligations under the Citations, and for such further relief as this Court deems just and necessary.

Dated: **July 1, 2014**

Respectfully submitted,



The Law Offices of Brendan R. Appel, LLC
Attorney for Plaintiff

The Law Offices of Brendan R. Appel, LLC
Brendan R. Appel
Alex P. Blair
191 Waukegan Road, Suite 360
Northfield, Illinois 60093
(847) 730-4224 (847) 730-4114 (facsimile)
Attorney No.: 38354

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EXHIBIT A

(Rev. 12/4/00) CCG 0005 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT GOLDEN

v.

LANNY GIBRICK d/b/a ALAN'S DRAPERIES, INC.

No. 2014 M2 001791

CITATION TO DISCOVER ASSETS

To: Lanny Gibrick, 501 Thorndale Dr., Buffalo Grove, IL 60089

YOU ARE COMMANDED to appear before Judge Roger Fein or any judge sitting in his/her stead in Room 202 at the location of 5600 Old Orchard Rd., Skokie Illinois, on June 11, 2015, at 10:30 a.m. to be examined under oath to discover assets or income not exempt from enforcement of a judgment.

A judgment in favor of Robert Golden and against Lanny Gibrick d/b/a Alan's Draperies was entered on December 16, 2014 (or revived on _____, _____) in the amount of \$ 16,374.23 + costs and \$ 18,740.58 remains unsatisfied, including costs and post-judgment interest.

YOU ARE COMMANDED to produce at the examination:

All documents requested in Addendum A of this Citation to Discover Assets,

and all books, papers or records in your possession or control which may contain information concerning the property or income of, or indebtedness due judgment debtor.

YOU ARE PROHIBITED from making or allowing any transfer or other disposition of, or interfering with, any property not exempt from execution or garnishment belonging to the judgment debtor or to which the judgment debtor may be entitled or which may be acquired by or become due to the judgment debtor and from paying over or otherwise disposing of any money not so exempt, which is due or becomes due to the judgment debtor, until further order of court or termination of the proceedings. You are not required to withhold the payment of any money beyond double the amount of the judgment.

WARNING: YOUR FAILURE TO APPEAR IN COURT AS HEREIN DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL.

CERTIFICATE OF ATTORNEY (OR NON - ATTORNEY)

NOTE: THIS CITATION MUST BE ACCOMPANIED AT THE TIME OF SERVICE BY EITHER A COPY OF THE UNDERLYING MEMORANDUM OF JUDGMENT OR A CERTIFICATION BY EITHER THE CLERK THAT ENTERED THE JUDGMENT OR THE ATTORNEY FOR THE JUDGMENT CREDITOR SETTING FORTH THE FOLLOWING:

In the Circuit Court of Cook County (or other Jurisdiction) _____ on December 16, 2014, (specify)

A judgment in the amount of \$ 16,374.23 + costs was entered in favor of Robert Golden and against Lanny Gibrick d/b/a Alan's Draperies, Inc. in Case No. 2014 M2 001791 and a balance of \$ 18,740.58 remains unsatisfied, including costs and post-judgment interest.

I, the undersigned certify to the Court, under penalties as provided by law pursuant to 735 ILCS 5/1-109 that all information stated herein is true.

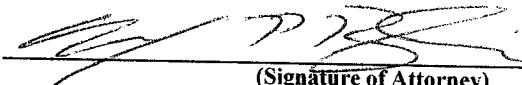
Atty. No.: 38354

Name: Alex P. Blair

Address: 191 Waukegan Road, Ste. 360

City/State/Zip: Northfield, IL 60093

Telephone: 847.730.4224


(Signature of Attorney)

WITNESS: _____

Clerk of the Circuit Court

SEAL

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(Rev. 12/4/00) CCG 0005 B

on oath states:

I am over 18 years of age and not a party to this case. I served the Citation To Discover Assets as follows:

on _____ by leaving a copy with him/her personally on _____, _____,
at the hour of _____ m., at _____ Street, in _____, Illinois.
or
on _____ by leaving on _____, _____, at the hour of _____ m.,
at _____ Street, in _____, Illinois, his/her usual place of abode
with, _____ a person of his/her family of the age of 13 or upwards informing that person
of the contents of the Citation to Discover Assets, and also by sending on a true and correct copy on

_____, _____, by prepaid Registered Mail, addressed to him/her; Return Receipt
Requested, delivery limited to addressee only. The registry receipt signed by addressee on

_____, _____, is attached.

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receipt here)

**Signed and sworn to before me on this _____

day of _____, _____

Notary Public

**If service is made by sheriff, return may be made by certificate rather than by sworn affidavit.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**ADDENDUM A TO CITATION TO DISCOVER ASSETS
DOCUMENTS TO BE PRODUCED**

1. Copies of state and federal income tax returns for the last three years.
2. Earnings statements from your last twelve months' worth of paychecks or other income to you.
3. Business records for the present year and past calendar year which reflect assets, liabilities, gross receipts and expenses for any sole proprietorship, partnership, limited liability company or corporation in which you, or your spouse, own any interest.
4. Current bank statements for the past 12 months from all banks, or other financial institutions, where any sole proprietorship, partnership, limited liability company or corporation in which you, or your spouse, own any interest, has had an account of any kind.
5. Current bank statements for the past 12 months from all banks, or other financial institutions, where you, or your spouse have an account of any kind.
6. All trust agreements in which you, or your spouse, are named trustor, trustee or beneficiary.
7. All deeds, leases, contracts, and other documents representing any ownership interest you, or your spouse, have in any real property, and all deeds of trust, mortgages, or other documents evidencing encumbrances of any kind on your real property.
8. All stocks, bonds, or other security of any class you may own, by you separately, or jointly with others, including options to purchase any securities.
9. Titles to all motor vehicles owned or leased by you, your spouse, or any children living at your home. Including, but not limited to, the following vehicles:
 - a. 2000 Chevrolet Blazer, Plate No. S783576, VIN No. 1GNCT18W0YK246363
 - b. 2007 Chevrolet Express G2500, VIN No. 1GCGG25V171154876
10. The payment book or last three months' monthly statements, for any motor vehicle owned or leased by you, your spouse, or any children living at your home.
11. All life insurance policies in which you are either the insured or the beneficiary.
12. All promissory notes held by you, and all other documents evidencing any money owed to you either now or in the future.
13. All deeds, bills of sale, or other documents prepared in connection with any transfer made by you, either by gift, sale, or otherwise, in the last three years.

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14. A schedule of all regular expenses paid by you, such as installment debts, food, utilities, etc. Include the amount paid, the payee, and, if an installment debt, the amount of debt owing and any security pledged.
15. All documents evidencing any interest you have in any pension plan, retirement fund, or profit sharing plan.
16. All records pertaining to your assets and finances.
17. All records of any unincorporated business of which you are an owner or part owner, or have been an owner.
18. All statements for the past twelve months from any person or entity, including, without limitation, your attorneys, showing any escrow, retainer or account balance.
19. All applications for credit or loans completed by you or any entity in which you have an interest for the past twenty four months.

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EXHIBIT B